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## **TITLE 326 AIR POLLUTION CONTROL BOARD**

### **SECOND NOTICE OF COMMENT PERIOD**

#03-201(APCB)

#### **DEVELOPMENT OF AMENDMENTS TO RULE 326 IAC 2-10 CONCERNING PERMIT BY RULE**

##### **PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for rule 326 IAC 2-10, Permit by Rule. 326 IAC 2-11, Permit by Rule for Specific Source Categories, which was first noticed with 326 IAC 2-10, under First Notice of Comment Period in the Indiana Register at 26 IR 3757 on August 1, 2003, will be the subject of a separate Second Notice. By this notice, IDEM is soliciting comment on the draft rule language for 326 IAC 2-10. This rule was noticed for readoption in the initial sunset rulemaking (LSA #00-44); a request was made that the rule go through the regular environmental rulemaking process under IC 13-14-9. IDEM seeks comments on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

##### **HISTORY**

First Notice of Comment Period: August 1, 2003, Indiana Register (26 IR 3757).

**CITATIONS AFFECTED:** 326 IAC 2-10.

**AUTHORITY:** IC 13-14-9; IC 13-14-9.5.

##### **SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**

###### **Basic Purpose and Background**

In 1996, the Indiana Legislature provided for the expiration of certain administrative rules unless expressly readopted under IC 13-14-9.5. 326 IAC 2-10, permit by rule, is subject to IC 13-14-9.5. All rules adopted after December 31, 1995, expire on January first of the seventh year after the year in which the rule takes effect. IC 13-14-9.5-4(a) provides that the department or board that has rulemaking authority under Title 13 may readopt all rules subject to expiration under one rule that lists all rules that are readopted by their titles and subtitles only. IC 13-14-9.5-4(b) provides that if a person submits to the department or board that has rulemaking authority under Title 13 a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must readopt the rule separately from the readoption rule and follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule. 326 IAC 2-10 was first noticed for readoption in the first sunset rulemaking (LSA #00-44). Because a request and a basis for the request was submitted during the first comment period, 326 IAC 2-10 was not readopted in the first sunset rulemaking and must now go through the IC 13-14-9 rulemaking process.

The commissioner may require the owner or operator of a source or emissions unit that has the potential to emit any air pollutant to complete a permit application. If, after review of a permit application, the commissioner determines that the source is subject to the registration, permit, modification approval, or permit revision provisions under the permit review rules and is required to receive a registration, permit, modification approval, or permit revision, the commissioner may require the owner or operator of the source to obtain a construction or operation permit, modification approval, or permit revision prior to constructing, operating, or modifying the source. With the exception of operation and modification of a source pursuant to permits by rule under 326 IAC 2-10, Permit by Rule, and 326 IAC 2-11, Permit by Rule for Specific Source Categories, there are costs associated with holding a registration, permit, modification approval, or permit revision. There are no permitting costs associated with being permitted by rule under 326 IAC 2-10 or 326 IAC 2-11.

326 IAC 2-10 applies to sources that limit their actual emissions below major source levels and do not have a control device as an integral part of their process. A source that meets the requirements of the rule possesses a permit under the rule. 326 IAC 2-10, sections 1 through 6, was adopted in 1996; section 1 of that rule was amended in 1998 and will

expire on January 1, 2006. Sections 2 through 6 will expire on January 1, 2004.

The number of sources that are covered by 326 IAC 2-10 is not known since the rule provides that as long as a source can demonstrate compliance with the requirements of the rule upon request, it is covered by the permit by rule and is not required to possess a permit issued by the department. This rulemaking will provide an opportunity for public comment and amendment or readoption of 326 IAC 2-10. The only changes IDEM proposes to these rules are removing and updating references to repealed laws.

#### **IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed Under Federal Law**

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. 326 IAC 2-10 is a voluntary state only permit by rule program. A source can choose to be permitted by rule under 326 IAC 2-10 if it meets the applicability criteria. If a source is not permitted under 326 IAC 2-10, it may be required to hold a permit under an approved permit program. Additionally, the minor corrections in the draft rule impose no requirements.

#### **Potential Fiscal Impact**

If 326 IAC 2-10 expires, sources that are now permitted by 326 IAC 2-10 may be required to hold a permit issued by the department under one of the following programs: 326 IAC 2-6.1, Minor Source Operating Permit Program; 326 IAC 2-7, Part 70 Permit Program; 326 IAC 2-8, Federally Enforceable State Operating Permit Program; or 326 IAC 2-9, Source Specific Operating Agreements, as applicable. There are fees associated with each type of permit.

If the rules are amended, the potential fiscal impact will not be assessable until the nature of the rule amendments being proposed is known.

If the rules are readopted with only the minor corrections indicated in the draft rule, there will be no fiscal impact to the sources, the department, or citizens.

#### **Public Participation and Workgroup Information**

No workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is necessary, please contact Pat Troth, Rules Development Section, Office of Air Quality at (317) 233-5681 or (800) 451-6021 (in Indiana).

### **SUMMARY/RESPONSE TO COMMENTS FROM THE FIRST COMMENT PERIOD**

IDEM requested public comment from August 1, 2003, through September 1, 2003, on alternative ways to achieve the purpose of the rule and suggestions for the development of draft rule language. IDEM received no comments specific to 326 IAC 2-10 in response to the first notice of public comment period. Comments were received addressed to 326 IAC 2-11. Therefore, the rulemaking will be split into two (2) separate rulemakings and the comments related to 326 IAC 2-11 will be addressed in rulemaking #03-201(2)(APCB).

### **REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Mailed comments should be addressed to:

#03-201(APCB)[326 IAC 2-10]

Pat Troth

c/o Administrative Assistant

Rules Development Section

Air Programs Branch

Office of Air Quality

Indiana Department of Environmental Management

P.O. Box 6015

Indianapolis, Indiana 46206-6015.

Hand delivered comments will be accepted by the receptionist on duty at the Tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-2342, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rules Development Section at (317) 233-0426.

### **COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by October 31, 2003.

Additional information regarding this action may be obtained from Pat Troth, Rules Development Section, Office of

Air Quality, (317) 233-5681 or (800) 451-6027 (in Indiana).

## **DRAFT RULE**

SECTION 1. 326 IAC 2-10-1 IS READOPTED TO READ AS FOLLOWS:

### **326 IAC 2-10-1 Limiting potential to emit**

**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 1. (a) A source that would otherwise be required to have a permit under 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or an operating agreement as described in 326 IAC 2-9 may limit its potential to emit by complying with the conditions of this rule. A source complying with this rule is not subject to 326 IAC 2-6.1, 326 IAC 2-7, 326 IAC 2-8, or 326 IAC 2-9 unless otherwise required by federal law.

(b) A source complying with this rule may at any time apply for a state operating permit under 326 IAC 2-6.1, Part 70 permit under 326 IAC 2-7, a FESOP under 326 IAC 2-8, or an operating agreement under 326 IAC 2-9, as applicable. (*Air Pollution Control Board; 326 IAC 2-10-1; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10; filed Nov 25, 1998, 12:13 p.m.: 22 IR 1063*)

SECTION 2. 326 IAC 2-10-2 IS AMENDED TO READ AS FOLLOWS:

### **326 IAC 2-10-2 Definitions**

**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-11-2; IC 13-15; IC 13-17

Sec. 2. The definitions provided in ~~IC 13-1-1-2, IC 13-7-1 and IC 13-1-1-2~~ and ~~IC 13-7-1~~ were repealed by P.L. 1-1996, SECTION 99, effective July 1, 1996, IC 13-11-2, 326 IAC 1-2, and 326 IAC 2-7 shall apply to this rule. (*Air Pollution Control Board; 326 IAC 2-10-2; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10*)

SECTION 3. 326 IAC 2-10-3 IS READOPTED TO READ AS FOLLOWS:

### **326 IAC 2-10-3 Conditions**

**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 3. The conditions of this rule that limit potential to emit are as follows:

(1) The source limits actual emissions for every twelve (12) month period to less than twenty percent (20%) of any threshold for the following:

(A) A major source of regulated air pollutants.

(B) A major source of hazardous air pollutants, as defined in Section 112 of the Clean Air Act.

(2) The source does not rely on air pollution control equipment to comply with subdivision (1).

(*Air Pollution Control Board; 326 IAC 2-10-3; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10*)

SECTION 4. 326 IAC 2-10-4 IS READOPTED TO READ AS FOLLOWS:

### **326 IAC 2-10-4 Demonstration of compliance**

**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 4. Not later than thirty (30) days after receipt of a written request by the department or U.S. EPA, the owner or operator shall demonstrate that the source is in compliance with the conditions provided in section 3 of this rule. The demonstration of compliance shall be based on actual emissions for the previous twelve (12) months and may include, but is not limited to, fuel or material usage, or production records. No other demonstration of compliance shall be

required. (*Air Pollution Control Board; 326 IAC 2-10-4; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10*)

SECTION 5. 326 IAC 2-10-5 IS READOPTED TO READ AS FOLLOWS:

**326 IAC 2-10-5 Compliance with other provisions**

**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-15; IC 13-17

Sec. 5. (a) This rule does not affect a source's requirement to comply with provisions of any other applicable federal, state, or local requirement, except as specifically provided in section 1 of this rule.

(b) A source subject to this rule shall be subject to applicable requirements for a major source, including 326 IAC 2-7, if:

- (1) at any time the source is not in compliance with the conditions provided in section 3 of this rule; or
- (2) the source does not timely or adequately demonstrate compliance with the conditions in section 3 of this rule as required under section 4 of this rule.

(*Air Pollution Control Board; 326 IAC 2-10-5; filed Sep 5, 1996, 11:00 a.m.: 20 IR 10*)

SECTION 6. 326 IAC 2-10-6 IS AMENDED TO READ AS FOLLOWS:

**326 IAC 2-10-6 Enforcement**

**Authority:** IC 13-14-8; IC 13-15-2; IC 13-17-3-4; IC 13-17-3-11

**Affected:** IC 13-14-12; IC 13-15; IC 13-17; IC 13-30

Sec. 6. Any violation of this rule may result in administrative or judicial enforcement proceedings under ~~IC 13-7-11~~ ~~IC 13-7-11 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.~~ IC 13-30-3 and penalties under ~~IC 13-7-13~~ ~~IC 13-7-13 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.~~ IC 13-14-12, IC 13-30-4, IC 13-30-5, IC 13-30-6, or IC-30-8. (*Air Pollution Control Board; 326 IAC 2-10-6; filed Sep 5, 1996, 11:00 a.m.: 20 IR 11*)

**Notice of First Meeting/Hearing**

*Under IC 4-22-2-24, IC 13-14-8-6, and IC 13-14-9, notice is hereby given that on December 3, 2003, at 1:00 p.m. at the Indiana Government Center-South, 402 West Washington Street, Conference Center Room C, Indianapolis, Indiana the Air Pollution Control Board will hold a public hearing on amendments to 326 IAC 2-10. The purpose of this hearing is to receive comments from the public prior to preliminary adoption of these rules by the board. All interested persons are invited and will be given reasonable opportunity to express their views concerning the proposed amendments. Oral statements will be heard, but, for the accuracy of the record, all comments should be submitted in writing.*

*Additional information regarding this action may be obtained from Patricia Troth, Rules Development Section, Office of Air Quality, (317)233-5681 or (800) 451-6027 (in Indiana).*

*Individuals requiring reasonable accommodations for participation in this event should contact the Indiana Department of Environmental Management, Americans with Disabilities Act coordinator at:*

*Attn: ADA Coordinator*

*Indiana Department of Environmental Management*

*100 North Senate Avenue*

*P.O. Box 6015*

*Indianapolis, Indiana 46206-6015*

*or call (317) 233-0855, TDD: (317) 232-6565. Speech and hearing impaired callers may contact IDEM via the Indiana Relay Service at 1-800-743-3333. Please provide a minimum of 72 hours' notification.*

*Copies of these rules are now on file at the Office of Air Quality, Indiana Department of Environmental Management, Indiana Government Center-North, 100 North Senate Avenue, Tenth Floor East and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.*